

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HOMETASK HANDYMAN SERVICES, INC.,

Plaintiff,

v.

PAUL SZEWCZYK,

Defendant.

CASE NO. C07-1283RSM

ORDER ON DEFENDANT'S
MOTION TO DISMISS

This matter is before the Court for consideration of defendant's Rule 12(b)(6) motion to dismiss, Dkt. # 26. Defendant asserts that plaintiff can prove no set of facts which would support the allegations of trademark infringement, false designation of origin, or federal trademark dilution.¹ With respect to plaintiff's claim of trademark infringement under Section 32 of the Lanham Act, 15 U.S.C. § 1114(1) (Count I of the Complaint), the motion shall be granted, as this section applies only to registered trademarks, and plaintiff has alleged no registered trademark in the equipment or symbols at issue in this lawsuit, the yellow van and the phone number used by defendant.

However, as to plaintiff's claims of false designation of origin (Count II) and trademark dilution (Count III), the motion must be denied. These claims are brought under Section 43 of the Lanham Act,

¹ Defendant's motion confuses Sections 32 and 43(a) with respect to their statute citations. *See*, Motion to Dismiss, p. 4, lines 3-7. The Court has cited these sections as they are correctly pled in the complaint.

1 15 U.S.C. § 1125(a) and (c), for which registration of the trademark is not a prerequisite. The Court
2 cannot determine, as a matter of law, that plaintiff cannot state any facts in support of this claim without
3 an inquiry into matters outside the pleadings. This determination is properly the subject of a motion for
4 summary judgment, not a Rule 12(b)(6) motion to dismiss.

5 Defendant's motion to dismiss is accordingly GRANTED as to Count I, the trademark
6 infringement claim, and DENIED as to Counts II and III for false designation of origin and trademark
7 dilution.

8 The Court notes that the parties have not filed their Joint Status Report and Discovery Plan, as
9 directed in the Court's Order dated January 3, 2008. The Joint Status Report was due February 14, 2008.
10 The parties shall confer and file such report on or before May 23, 2008, or face appropriate sanctions.

11 DATED this 5 Day of May 2008.

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13 RICARDO S. MARTINEZ
14 UNITED STATES DISTRICT JUDGE
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